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Fair Housing

Many property managers believe that they both thoroughly understand the fair housing law and comply with it. Yet they are not aware that there are actually several fair housing laws. These laws go well beyond prohibiting the obvious racial discrimination that most people associate with fair housing. For instance, if your property is within the City of Chicago, you could be dealing with thirteen protected classes of individuals. Can you name all thirteen of those protected classes? If not, you are in serious risk of violating the fair housing laws. It is essential to learn the laws and to comply with them fully.

Fair housing complaints are most prevalent in rental housing. In Chicago, for example, the law includes prohibitions against discrimination on the basis of the source of income. While the law does not mandate that you accept prospective

renters who have a certificate or voucher from the federal section 8 housing assistance program, it does not allow you to reject them solely on the basis of their source of rental payment.

Fair housing laws do not allow you to bar families with children from your property by setting unrealistic occupancy limits. For instance, a two-bedroom apartment is generally felt to be adequate in size to house four individuals (two persons per bedroom). The key word is “**individuals**,” and their ages, sex, and legal relationship to one another are not relevant to their being housed.

Start by defining the appropriate maximum number of individuals permitted in each unit. While it is generally adequate to set a limit of two persons per bedroom, you should review the square footage and configuration of your apartments to determine if that level is fair and is not designed to avoid renting to

families with children. We suggest that you review the “Keating Memo” that is included in this section to gain a fuller understanding of how “number of occupants” relates to both the number of bedrooms and size of the unit.

The following are the laws and ordinances that may apply to the property you manage. Read them carefully. Then incorporate those laws that apply to your property into your overall management and marketing plan.

Use the information contained in these ordinances to make sure that you understand your local Fair Housing laws. Then, develop a tenant selection plan that is in compliance with those laws. Finally, follow that plan with every applicant to ensure compliance and to protect yourself from potentially costly violations.

Protected Classes

Protected Classes	1866 Civil Rights Act	1968 Fair Housing Act	Equal Credit Opportunity Act	Illinois Human Rights Act	Chicago Fair Housing Ordinance	Cook County Human Rights Ordinance
Race	x	x	x	x	x	x
Color	x	x		x	x	x
Religion		x	x	x	x	x
Sex		x	x	x	x	x
National Origin/Ancestry		x	x	x	x	x
Familial/ Parental Status		x		x	x	x
Disability/ Handicap		x		x	x	x
Age			x	x	x	x
Military Discharge				x	x	x
Marital Status			x	x	x	x
Sexual Orientation					x	x
Source of Income					x	x
Housing Status						x

FAIR HOUSING ENFORCEMENT POLICY: OCCUPANCY CASES (“KEATING MEMO”)

(Editor’s note: The following memo was issued on March 20, 1991, by HUD General Counsel Frank Keating. It provides guidance to HUD enforcement personnel for determining whether neutral occupancy limits are reasonable under the Fair Housing Act.

MEMORANDUM FOR: *All Regional Counsel*
FROM: *Frank Keating, General Counsel*
SUBJECT: *Fair Housing Enforcement Policy: Occupancy Cases*

On February 21, 1991, I issued a memorandum designed to facilitate your review of cases involving occupancy policies under the Fair Housing Act. The memorandum was based on my review of a significant number of such cases and was intended to constitute internal guidance to be used by Regional Counsel in reviewing cases involving occupancy restrictions. It was not intended to create a definitive test for whether a landlord or manager would be liable in a particular case, nor was it intended to establish occupancy policies or requirements for any particular type of housing.¹

However, in discussions within the Department, and with the Department of Justice and the public, it is clear that the February 21 memorandum has resulted in a significant misunderstanding of the Department’s position on the question of occupancy policies which would be reasonable under the Fair Housing Act. In this respect, many people mistakenly viewed the February 21 memorandum as indicating that the Department was establishing an occupancy policy which it would consider reasonable in any fair housing case, rather than providing guidance to Regional Counsel on the evaluation of evidence in familial status cases which involve the use of an occupancy policy adopted by a housing provider.

As you know, assuring Fair Housing for all is one of Secretary Kemp’s top priorities. Prompt and vigorous enforcement of all provisions of the Fair Housing Act, including the protections in the Act for families with children, is a critical responsibility of mine and every person in the office of General Counsel. I expect Headquarters and Regional Office staff to continue their vigilant efforts to proceed to formal enforcement in all cases where occupancy restrictions are used to exclude families with children or to unreasonably limit the ability of families with children to obtain housing.

In order to assure that the Department’s position in the area of occupancy policies is fully understood, I believe that it is imperative to articulate more fully the Department’s position on reasonable occupancy policies and to describe the approach that the Department takes in its review of occupancy cases.

¹ For example, there is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. See Handbook 7465.1 REV-2, Public Housing Occupancy Handbook: Admission, revised section 5-1 (issued February 12, 1991). While that Handbook, provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.

Specifically, the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. The Department of Justice has advised us that this is the general policy it has incorporated in consent decrees and proposed orders, and such general policy is consistent with the guidance provided to housing providers in the HUD handbook referenced above. However, the reasonableness of any occupancy policy is rebuttable, and neither the February 21 memorandum nor this memorandum implies that the Department will determine compliance with the Fair Housing Act based solely on the number of people permitted in each bedroom. Indeed, as we stated in the final rule implementing the Fair Housing Amendments Act of 1988, the Department's position is as follows:

There is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code.

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

24 C.F.R. Chapter I, Subchapter A. Appendix I at 566-67 (1990)

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms of special circumstances would make an occupancy policy reasonable.

Size of bedrooms and unit

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a two people per bedroom policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all facts, it could be reasonable for the park manager to limit occupancy of the home to two people.

Age of Children

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrates this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not the second.

Configuration of unit

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a “two people per bedroom” occupancy policy. The first association manages a building in which a family of five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not the second.

Other physical limitations of housing

In addition to physical considerations such as size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

State and local law

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider’s occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider’s occupancy policies are reasonable.

Other relevant factors

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) taken other steps to discourage families with children from living in its housing; or (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marked as an “adults only” development would mitigate in favor of issuing a charge. This policy is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit.

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because twenty of the thirty units already are occupied by families with children, a reasonable cause recommendation would be warranted.

If your review of the evidence indicates that these or other special circumstances are present, making application of a “two people per bedroom” policy unreasonably restrictive, you should prepare a reasonable cause determination. The Executive Summary should explain the special circumstances which support your recommendation.

Questions regarding occupancy cases should be directed to Dorothy Brown, Associate General Counsel (FTS 458-1240), or Harry Carey, Assistant General Counsel for Fair Housing (FTS 458-0570)

SUMMARY FAIR HOUSING LAWS

A. Federal Civil Rights Laws

1. **Fair Housing Act.** Housing discrimination based upon race, color, religion, sex, national origin, familial status or handicap is illegal under provisions of Title VIII of the Civil Rights Act of 1968, as amended in 1974, and 1988.

This law specifically prohibits the following acts:

- a. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, national origin, familial status (children under the age of 18) or handicap.
 - b. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, national origin, familial status, or handicap.
 - c. To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
 - d. To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
 - e. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, handicap, or familial status.
 - f. To refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person, if such modifications are necessary to afford such person full enjoyment of the premises, and to refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.
2. **Civil Rights Act of 1866** bans racial and ethnic discrimination in all housing transactions, private as well as state involved. (*Jones v. Mayer, 1968*)
 3. **Equal Credit Opportunity Act** outlaws discrimination in the issuance of credit based upon race, religion, national origin, sex, age, marital status or the fact that an applicant receives public assistance income.

B. Illinois Laws

1. The **Illinois Human Rights Act** effective July 1, 1980, and amended in 1989 implements the provisions of Section 17, 18 and 19 of Article 1 of the Illinois Constitution which prohibits discrimination in the sale or rental of residential property. Its housing discrimination provisions are essentially the same as those of the federal Fair Housing Act, except that it also prohibits discrimination based on ancestry, age, marital status and unfavorable discharge from military service.
2. **Illinois Revised Statutes, Chapter 38, Section 12-7.1** makes crimes such as assault, theft criminal trespass to residence or criminal damage to property by reason of the race, color, creed, religion, ancestry, sexual orientation, physical or mental disability, or national origin of another individual or group a Class A misdemeanor and is called a Hate Crime.

C. Local Fair Housing Statutes

Many cities and villages in the state of Illinois have fair housing ordinances enforced at the local level. Check with the local mayor's office, village clerk or human relations (rights) commission or department for a copy and for more information.

D. Real Estate License Act of 1989

Illinois Revised Statutes, Chapter III. par. 5818 (h) 22 and 23

The Department of Professional Regulation may refuse to issue or renew a license, may place, on probation, may suspend or may revoke any license, or may reprimand or impose a civil penalty not to exceed \$10, 000.00 upon any licensee:

Where the licensee in performing or attempting to perform or pretending to perform any act as a broker or salesperson, or where such licensee, in handling his own property, whether held by deed, option or otherwise, is found guilty of:

Influencing or attempting to influence, by any words or acts a prospective seller, purchaser, occupant, landlord or tenant of real estate, so as to promote, or tend to promote, the continuance or maintenance or racially and religiously segregated housing, or so as to retard, obstruct or discourage racially integrated housing on or in any street, block, neighborhood or community.

Engaging in any act that violates the fair housing provisions of the Illinois Human Rights Act whether or not a complaint has been filed with or adjudicated by the Human Rights Commission.

COOK COUNTY HUMAN RIGHTS ORDINANCE

In order to assure that all people who live and work in the County of Cook shall be protected from unequal treatment because of bigotry and bias, the Cook County Human Rights Ordinance prohibits unlawful discrimination and sexual harassment in employment, housing, credit transactions, public accommodations, access to County services, facilities and programs and County contracting. The Ordinance defines “unlawful discrimination” as discrimination or harassment based on a person’s *race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, or housing status.*

HOUSING

PROHIBITIONS

Article VI of the Ordinance prohibits unlawful discrimination in connection with the terms or conditions of the sale, occupancy or lease of residential real estate in Cook County. This prohibition includes discrimination in the provision of services or utilities in connection with the sale or lease of residential property, the brokering or appraising of residential property and the making of loans for the purchase, repair or improvement of residential property.

The Ordinance further prohibits:

- discrimination in the advertising and listing of residential property;
- blockbusting or the encouragement thereof; and
- the intentional creation of alarm in any community based on the present or prospective entry of individuals protected
- by his Ordinance into the neighborhood.

Sexual harassment in connection with any real estate transaction is also prohibited.

LIMITATIONS AND EXCEPTIONS

Housing restricted to a certain age group such as the elderly is permitted under the Ordinance

Religious organizations may limit the sale, occupancy or rental of housing they own to members of the same religion.

Restricting the rental of rooms to one sex is permitted.

Rental of rooms in a private home by an owner is exempt.

Landlords shall not be required to participate in the federal Section 8 housing assistance program or to lease or rent to any tenant using a Section voucher or certificate to pay a portion of their rent.

ADDITIONAL CIVIL RIGHTS VIOLATIONS

The Ordinance further prohibits:

- retaliation against anyone who opposes unlawful discrimination or sexual harassment or has filed or participated in an investigation under the Ordinance.
- aiding and abetting a person to commit a violation of the Ordinance; and
- interference with Commission members and staff in the exercise of their powers of performance of their duties.

ENFORCEMENT

The Ordinance creates an eleven member Human Rights Commission with the authority to investigate, adjudicate and conciliate complaints of violations of the Ordinance. The Commission shall have subpoena power and shall be authorized to seek temporary or preliminary injunctive relief.

Persons who believe they have been victims of unlawful discrimination may file a written complaint with the Commission with 180 days of the discriminatory act. The Commission will conduct a neutral fact-finding investigation and, if substantial evidence of a violation is found, will conduct a hearing.

The relief that may be awarded for violations of the Ordinance includes, but is not limited to: cease and desist orders; actual damages; hiring or reinstatement; leasing of housing; admission to a public accommodation; attorney fees; and fines of up to \$500 a day for each offense.

The Ordinance also creates a limited private right of action for violations of the Ordinance. Subsequent to a finding of substantial evidence that a violation of the Ordinance has occurred, a complaint or, in housing complaints only, the respondent may elect to have the complaint heard by a court of law. If granted and a complaint is filed in court, the Commission will cease to have jurisdiction over the matter.

The Commission's additional powers and duties include:

- conducting research, public forums and educational programs on discrimination and improving human relations;
- issuing rules and regulations;
- rendering an annual report; and
- entering into intergovernmental agreements regarding the referral and processing of complaints of discrimination.

APPLICABILITY

The Ordinance shall apply to County government and unincorporated Cook County. With respect to the villages and municipalities of Cook County, the Ordinance shall apply in the following manner:

1. In accordance with the Constitution, if a municipal ordinance is in conflict with this Ordinance, the municipal ordinance shall supersede this Ordinance.
2. If a municipal ordinance prohibits that same conduct prohibited by this Ordinance (or in other words is consistent with or duplicates the prohibitions of this Ordinance) this Ordinance shall not apply within that municipality with respect to such conduct. To the extent that a municipal ordinance is less comprehensive, this Ordinance shall be enforceable within the municipality.

**COOK COUNTY
HUMAN RIGHTS COMMISSION
69 WEST WASHINGTON ST., STE. 2900
(312) 603-1100**

CHICAGO FAIR HOUSING ORDINANCE

(Effective May 6, 1990)

Chapter 198.7B

“Be it Ordained by the City Council of the City of Chicago:

198.7B-1 It is hereby declared the policy of the City of Chicago to assure full and equal opportunity to all residents of the City to obtain fair and adequate housing for themselves and their families in the City of Chicago without discrimination against them because of race, color, sex, age, religion, disability, natural origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.

198.7B-2 It is further declared to be the policy of the City of Chicago that have no owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent or lease any housing accommodation, within the City of Chicago, or any agent of these, should refuse to sell, rent, lease, or otherwise deny to or withhold from any person or group of persons such housing accommodations because of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income in the terms, conditions, or privileges or the sale, rental or lease of any housing accommodations or in the furnishing of facilities or services or services in connection therewith.

198.7B-3 It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, managing agent, or other person firm or corporation having the right to sell, rent, lease or sublease any housing accommodation, within the City of Chicago or any agent of any of these, or any real estate broker licensed as such.

- A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in the furnishing of any facilities or services in connection therewith, predicated upon the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of any prospective buyer, lessee or renter of such property.
- B. To refuse to sell, lease or rent, any real estate for residential purposes within the City of Chicago because of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the proposed buyer or renter.
- C. To discriminate or to participate in discrimination in connection with borrowing or lending money, guaranteeing loans, accepting mortgages or otherwise obtaining or making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any residential housing unit or housing accommodation in the City of Chicago because of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.
- D. To solicit for sale, lease or listing for sale or lease, residential real estate within the City of Chicago on the ground of loss of value due to the present or prospective entry into any neighborhood of any person or persons of any particular race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.
- E. To distribute or cause to be distributed, written material or statements designed to induce any owner of residential real estate in the City of Chicago to sell or lease his property because of any present prospective changes in the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of persons in the neighborhood.
- F. To deliberately and knowingly refuse examination of any listing of residential real estate within the City of Chicago to any person because of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.

198.7B-4 Whenever used in this Chapter:

- (a) "Age" means chronological age of not less than 40 years.
- (b) "Disability" means (i) a determinable physical mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder including; but not limited to, a determinable physical characteristic which necessitates a person's use of a guide, hearing or support dog; or (ii) the history of such a characteristic; or (iii) the perception of such a characteristic by the person complained against.
- (c) "Marital status" means the legal status of being single, married, divorced, separated or widowed.
- (d) "Military discharge status" means the status of living with one or more dependent minor or disabled children.
- (e) "Parental status" means the status of living with one or more dependent minor or disabled children.
- (f) "Religion" means all aspects of religious observance and practice, as well as belief, except that with respect to employers, "religion" has the meaning ascribed to it in Section 199.5.
- (g) "Sexual orientation" means the actual or perceived state of heterosexuality, homosexuality or bisexuality.
- (h) "Source of income" means the lawful manner by which an individual supports himself or herself and his or her dependents.

198.7B-4.1 No provision of this Chapter shall be construed to prohibit any of the following:

- (a) Restricting rental or sale of a housing accommodation to a person of a certain age group (1) when such housing accommodation is authorized, approved, financed or subsidized in whole or in part for the benefit of that age group by a unit of state, local or federal government; or (2) when the duly recorded initial declaration of a condominium or community association limits such housing person owning or renting a unit in such housing accommodation prior to the recording of the initial declaration shall not be deemed to be in violation of the age restriction as long as the person or the person's immediate family continue to own or reside in the housing accommodation.
- (b) A religious organization, association or society, or any not-for-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of a dwelling which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.
- (c) Restricting the rental of rooms in a housing accommodation to persons of one sex.

198.7B-5 Any owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent, or lease any housing accommodation within the City of Chicago who shall exercise any function of selling, renting, leasing or subleasing any housing accommodation within the City of Chicago shall be deemed subject to all applicable provisions hereof. Any real estate broker who shall exercise any function of a real estate broker within the City of Chicago shall be subject to all applicable provisions hereof.

198.78-6 Any person aggrieved in any manner by any violation of this Chapter may file a written complaint with the Commission on Human Relations. The complaint shall include the name and address of the complainant and of every person against whom the complaint is made and shall set out the facts giving rise to the complaint. No one person shall refuse or fail or comply with any subpoena, order or decision issued in the course of or as a result of an investigation of a complaint.

198.7B-11 If any provision of this ordinance or the application thereof to any person or circumstances is held unconstitutional or otherwise invalid by any court, such invalidity shall not affect the remaining provisions or applications of this ordinance to any person or circumstance.

198.7B-12 Any owner, lessee, sublessee, assignee, managing agent or other person, firm, corporation, or real estate broker who shall violate or fail to comply with any of the provisions of this ordinance shall be punished by a fine in any sum not exceeding five hundred dollars (\$500.00). Nothing herein contained shall be construed so as to preclude any aggrieved person from pursuing such other and further legal and equitable relief to which he may be entitled.

198.7B-13 The Corporation Counsel shall file with the Department of Professional Regulation of the State of Illinois a notice of the conviction of any licensed real estate broker or salesperson found guilty of violating this Chapter.

This ordinance shall be in force and shall take effect 30 days after its passage and publication"



THE EQUAL CREDIT OPPORTUNITY ACT

If you still think only of credit cards when you hear the word “credit” think again. Credit is used by millions of consumers for a variety of purposes: to finance educations, remodel homes, obtain small business loans, and pay for home mortgages.

A law passed by Congress ensures that all consumers will be given a chance to receive credit. The Equal Credit Opportunity Act says it is illegal for creditors to discriminate against applicants on the basis of their sex, race, marital status, national origin, religion, age, or because they get public assistance income. This doesn’t mean all consumers who apply for credit will get it. Creditors can still use factors such as income, expenses, debts, and credit history to judge applicants.

The law protects consumers when dealing with any creditor who regularly extends credit, including: banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions. Anyone participating in the decision to grant credit, such as a *real estate broker who arranges financing*, is covered by the law. Businesses applying for credit are protected by the law, too. Consumers have equal rights in every phase of the credit application process. Here is a checklist of important rights to remember when credit is requested.

Creditors may not.....

- Discourage an applicant because of sex, marital status, age, religion, race, national origin, or because an applicant receives public assistance income.
- Ask an applicant to reveal sex, race, national origin, or religion. *Creditor may ask an applicant to voluntarily disclose this information if they are applying for a real estate loan.* This information helps federal agencies enforce anti-discrimination laws. A creditor may ask an applicant what his residence or immigration status is.
- Ask whether an applicant is divorced or widowed.
- Ask marital status if applicant is applying for separate, unsecured account. (Exceptions are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington—the “community property” states).
- Ask for information about husband or wife. A creditor may ask about spouse if : both spouses are applying; both spouses will be using the account; applicant is relying on spouse’s income or on alimony or child support income from a former spouse; or if applicant resides in a community property state (listed above).
- Ask about applicants plan for having or raising children.
- Ask if applicant receives alimony, child support, or separate maintenance payment. A creditor may ask for this information if applicant is first told that they don’t have to reveal it if applicant is not relying on it to get credit. A creditor may ask if applicant has to pay alimony, child support, or separate maintenance.

When Deciding Whether To Give Credit, Creditors May Not.....

- Consider sex, marital status, race, national origin, or religion.
- Consider whether a telephone is listed in applicants name. A creditor may consider whether there is a phone in the home.
- Consider the race of the people who live in the neighborhood where applicant wants to buy or improve a house with borrowed money.
- Consider applicants age, with certain exceptions:
 - Minors
 - Those 62 or over can be favored.
 - If it is used to determine the meaning of other factors which are important to credit-worthiness. (For example, a creditor could use applicants age to see if income might be reduced because of pending retirement).

When evaluating an applicants' income creditors may not:

- Refuse to consider reliable public assistance income in the same manner as other income.
- Discount income because of sex or marital status. (For example, a creditor cannot count a man's salary at 100% and a woman's at 75%). A creditor may not assume a woman of child-bearing age will stop work to have to raise children.
- Discount or refuse to consider income because it is derived from part-time employment or from pension
- Refuse to consider consistently-received alimony, child support, or separate maintenance payment A creditor may ask for proof that this income has been received consistently.

For more information on the Equal Credit Opportunity Act contact:

Federal Trade Commission
55 East Monroe Street Chicago, Illinois 60603
(312) 353-4423

There are a number of agencies and advocacy groups who are committed to insuring that Fair Housing Laws are complied with by all. Upon receiving a complaint these groups may send an investigator or in some cases send "TESTERS" to determine the validity of the complaint. If you are found to be in violation you can be fined or subject to civil penalties, including court costs and legal fees. Settlements exceeding \$100,000 are not uncommon.

We once again strongly urge you to read the Fair Housing information contained herein and practice Fair Housing as a normal routine at every property with which you are involved.

"TESTERS" IN FAIR HOUSING

"Aren't the actions and activities of real estate "tester", "checkers" or "auditors" entrapment and hence against the law?" This question comes up again and again in real estate fair housing training. The answer is that the federal courts have ruled repeatedly that "testers" 1) are not violating any law, 2) are often times obtaining evidence that can *only* be obtained by that process and 3) have standing in their own right to bring a civil action if they are denied truthful information about housing availability.

- (1) The U.S. Court of Appeals (Seventh Circuit) in a ruling on July 21, 1983, which involved a case brought by the Leadership Council, stated:

"It is frequently difficult to develop proof in discrimination cases and the evidence provided by testers is frequently valuable, if not indispensable. It is surely regrettable that testers must mislead commercial landlords and home owners as to their real intentions to rent or to buy housing. Nonetheless, we have long recognized that this requirement of deception was a relatively small price to pay to defeat racial discrimination. The evidence provided by testers both benefits unbiased landlords by quickly dispelling false claims of discrimination. We have discovered no case in which the credibility of testimony provided by a tester has been questioned simply because of the tester's "professional" status. Indeed, tester evidence may well receive more weight because of its source. Testers seem more likely to be careful and dispassionate observers of the events which lead to a discrimination suit than individuals who are allegedly being discriminated against".

- (2) The United States Supreme Court in the now famous "Heavens Case" ruled on February 24, 1982:

"Congress has thus conferred on all "person" a legal right to truthful information about available housing..... A tester who has been the object of a misrepresentation made unlawful under Sec. 804(d) has suffered injury in precisely the form the statute was intended to guard against, and therefore has standing to maintain a claim for damages under the Act's provisions. That the tester may have approached the real estate agent fully expecting that he would receive false information, and without any intention of buying or renting a home, does not negate the simple fact of injury within the meaning of Sec. 804(d)."

Richardson v. Howard, 712 F .2nd 319 (7th Circuit 1983)
Havens Realty Corp. v. Coleman, 102 S. Ct. 1114 (1982)